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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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| THE RICHARD AND SHEILA J. McKNIGHT 2000 FAMILY TRUST, Richard McKnight, Trustee<br><br>Plaintiff<br><br>v.<br><br>WILLIAM J. BARKETT, an individual, CASTAIC III PARTNERS, LLC a California limited liability company<br><br>Defendants<br><br>AND RELATED INTERVENOR ACTIONS, THIRD PARTY ACTIONS AND COUNTERCLAIMS | Case No. 2:10-cv-01617-RCJ<br><br>REPLY TO OBJECTION TO LODGED ORDER AMENDING JUDGMENT AND CERTIFYING AMENDED JUDGMENT AS FINAL PURSUANT TO F.R.C.P. 54(b)<br><br>DATE: August 24, 2015<br><br>TIME: 10:00 a.m.<br><br>COURTROOM: 6<br>Hon. Robert C. Jones |

On August 12 Ms. Rasmussen as attorney of record for a group of the Castaic Direct Lenders (i.e., the Plaintiffs in intervention in this case) filed a "Response to Supplemental Memorandum" (ECF No. 378) which amounts to an objection to two orders lodged by DACA.

Parts I and II of this Response do not take issue with the substance or intent of the Judgment or of DACA's proposed Ratification order (lodged via ECF No. 376). These proposed orders show, if nothing else, that it is DACA's intent to relinquish back to the Direct Lenders the guaranty claims that the Court found that DACA had inadvertantly acquired. Since the Direct Lenders were already purporting to sue on the guarantees, counsel for DACA concluded that the easiest way would be for DACA as the real party in interest to ratify the Direct Lenders' actions as is allowed under Federal Rule of Civil Procedure 17(a)(3). DACA is simply doing the best that it can to help the Direct Lenders by preserving guarantee claims. If the Court determines that an outright assignment of all guaranty rights is a better way to accomplish that end, DACA will do so immediately.

Part III of the Response is an unfortunate attack on the core of the Judgment itself. The Response states, incorrectly at page 3 lines 16-20 as follows:

> it has always just been stated that a majority of the direct lenders voted to join Castaic Investors, LLC, but no documentation has ever been filed or submitted to this Court for approval. The actual purchase-sale agreement was executed by Cross (MacAlan Duncan), not by the signature of the individual direct lenders. Since nothing was ever filed in this regard . . .

In support of its first motion for summary judgment *filed January 6, 2012,* DACA submitted the Declarations of McAlan Duncan (ECF No. 140 and Daniel Newman (ECF No. 141) which stated in detail how approval of the Purchase

Agreement was put to a vote of the Direct Lenders. According to Mr. Duncan's declaration, disclosure included the complete Purchase Agreement and all Exhibits, including the Operating Agreement of DACA-Castaic, LLC. At the same time, DACA submitted the Declaration of Carol Kesler, who tallied the ballots (ECF No. 142) and verified Exhibit 64 (a complete copy of all of the ballots), Exhibit 67,a tabulation table prepared by Ms. Kesler summarizing the results, and Exhibit 65, her Certification of the results.

The validity of the vote was not challenged by the Direct Lenders or Mr. Barkett in response to the motion. The Court, in ruling on the Motion, granted summary adjudication of that issue as follows in its Order entered March 14, 2012 (ECF No. 170), page 10 lines 1-4:

> Next, the Court rules that the Purchase Agreement was approved by majority interests in the loans in compliance with Chapter 645B, that Cross was authorized to perform under the Purchase Agreement, and that under Chapter 645B, Cross's actions under the Purchase Agreement were legitimate.

Part II of the Response says that "DACA has now lodged a proposed order purporting to clarify this issue, but it does not identify which direct lenders it affects, other than saying 'certain direct lenders.'" That is, again, just not true. Instead, the proposed amendment to the Judgment lodged by DACA (ECF No. 376) says only:

> The assignment of the Castaic Notes and Trust Deeds by those Direct Lenders who voted to accept the Purchase Agreement necessarily included, by operation of law, an assignment of rights under any guarantees of the obligations under those Notes. Accordingly, DACA is the real party in interest with respect to any claims based on those assigned guarantees.

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The other proposed order lodged by DACA, specifically at this Court's request, says:

> 1. As to those certain claims based on the written guaranty(ies) of Defendant William Barkett, which were assigned to DACA-Castaic, LLC ("DACA') by those Direct Lenders who affirmatively voted to accept the Purchase Agreement (the "Guaranty Claims"), the Court has determined that DACA is the real party in interest as to such claims.
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> 2. The Guaranty Claims are currently being prosecuted in the names of the various affected Direct Lenders. As stated above, DACA has ratified and authorized those affected Direct Lenders to continue and complete the prosecution of those Guaranty Claims pursuant to Federal Rule of Civil Procedure 17(a)(3).
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> 3. Accordingly, those Direct Lenders who affirmatively voted to accept the Purchase Agreement with DACA are permitted to continue to prosecute the Guaranty Claims in their own names.

The proposed orders do not even say "certain Direct Lenders," as the Response claims. Instead, they identify the class of Direct Lenders affected, i.e., all those who voted to approve the Purchase Agreement.

Part III of the Response is a not very well veiled attempt to dismember and reconsider a Judgment entered more than six months ago, after a series of motions, none of which were opposed by the Direct Lenders. This attack is based on misstatements of fact, as shown above. It also appears that the attack was made without the prior knowledge and agreement of Ms. Rasmussen's clients (other than perhaps one client – Christina Knoles). Certain of Ms. Rasmussen's clients have now submitted an objection claiming that she did not have authority to file the Response on their behalf.

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To date, there has not been a motion to withdraw by Ms. Rasmussen or a motion to disqualify counsel. DACA suggests that to protect the integrity of these proceedings the Court set a deadline for the filing of motions to withdraw or to disqualify counsel.

In the meantime, DACA seeks guidance as to how to proceed. Should the judgment be amended beyond the modification suggested by DACA, or at all? Should a motion be filed? Should DACA simply re-assign the guaranty claims to the Direct Lenders to avoid this problem? This issue should be promptly put to bed so that this judgment may be certified and the Direct Lenders can move closer to a sale of the Property. That sale will be prevented, due to unmarketability of title, so long as Mr. Barkett retains appeal rights.

DATE: August 20, 2015

KIRBY & McGUINN, A P.C.

By: /s/ Dean T. Kirby, Jr.
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